IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7988 OF 2004

Shri Narsinh Ramchandrarao Shinde ..Petitioner

Versus

Smt. shobha Shinde & Ors. ..Respondents

Shri Ashok Bhatewara with N.G.Mahajan for petitioner

Ms.Chandana Salgaocar Radia for Respondent Nos.1 to 4

CORAM : P.V.KAKADE, J.

DATE : 25TH OCTOBER, 2004

P.C.:

1. Heard the ld. counsel for both the parties.

2. Rule. Rule made returnable forthwith.

3. By this Writ Petition the Petitioner has challenged the Order of Joint Civil Judge, Senior Division, Pune dated 31st July, 2004 rejecting his application to

recall the witness for the purpose of cross examination under section 151 of C.P.C.

4. After going through the entire history of the litigation with the assistance of both the parties, it is clear that the witness one advocate Kinkar had filed her affidavit in the year 1995 to the effect that she was attesting the witness to the Will of one Smt. Yashodabai Ghule for which the dispute is pending before the learned trial judge. It is part of the record that the said witness advocate Kinkar was under cross examination for couple of days and was cross examined exhaustively. It was in the year 1997 thereafter the application Exh.486 Annexeur-D to this Petition was made on 27.7.2004 before the Lower Court that the defendant required to recall the witness for cross examination under section 151 of C.P.C. in view of certain knowledge which was received by the defendant pertaining to the issues involved in the dispute. According to the defendant they recently came to know that the document styled as Will of late Yashodabai on which Adv. Kinkar and Smt. Kanya Vithal Rao alleged to have signed as attesting witnesses was changed, at the time of registration before Mr. Hampe, the sub-Registrar, and

that Mr. Hampe was managed to register it even without any signature on the said document, and that, the signature of Yashodabai, Advocate Kinkar, Kanya Vithal Rao, Adv. Nandini Deshpande and Dr. Choudhary were subsequently and independently obtained on the said document after its registration and that, such substituted forged document is the alleged Will now on record at Exh.63.

5. After hearing both the parties the learned Trial Judge came to the conclusion that he was of the view that inherent power under Section 151 of C.P.C. were not required to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the code. This was especially so that the said Advocate Kinkar the witness was earlier recalled for the purpose of cross examination and therefore, the learned trial judge concluded that there was no necessity of calling her again for cross examination by using the inherent power under Section 151 of C.P.C. because it would not have been proper to exercise such power time and again. He also observed that witness was cross-examined on all the point and therefore it was not necessary to recall the witness and as such the

application was rejected.

6. It is submitted on behalf of the respondent that it is nothing but a tactics of delaying the process of law and therefore, this Petition deserves to be dismissed. In this regard it must be noted that the allegations made by the defendant appears to be very serious and alleged that even the sub-Registrar was handing gloves with other attesting witnesses to substitute the forged document of Will. The learned counsel for the Petitioner, however, was not ready to show what was the foundation for this application after a period of more than five years. In my considered view, unless and until proper foundation is led for such submission, in which involved serious allegations, which should not be allowed. This court made repeated query to the learned counsel for the petitioner but he was unable to disclose what was the proper foundation for such allegations. Considering the facts and circumstances involved I am of the view that witness advocate Kinkar was thoroughly cross examined even after recalling her and therefore, it has no substance in present allegations, especially when those are made without formulating any foundation to that effect. In other words that this allegation is

nothing but one more attempt to delay the proceeding in the trial court.

7. Therefore taking into account all these aspects I am of the view that the learned trial judge has rightly rejected the application holding that it would not be proper to him to invoke the jurisdiction of 151 of C.P.C. and therefore, I do not see any reason to interfere with the findings of the trial court. In the result the writ Petition is dismissed with no order as to costs.